

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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LANCASTER STEAMSHIP COMPANY, a  
Corporation, Owner of the Steamship "LAN-  
CASTER," Her Engines, Boilers, Boats,  
Tackle, Apparel and Furniture,  
Appellant,

vs.

COUNTY OF ALAMEDA, a Body Corporate,  
STATE COMPENSATION INSURANCE  
FUND and DANIEL SULLIVAN,  
Appellees.

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Apostles on Appeal.

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Upon Appeal from the Southern Division of the United  
States District Court for the Northern District  
of California, Third Division.

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FILED

FEB 17 1928

F. D. MONKTON,  
CLERK.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY—No. 19,048.

In the Matter of the Petition of LANCASTER STEAMSHIP COMPANY, a Corporation, for Exoneration from or Limitation of Liability.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this Court in the above-entitled matter, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

(1) All those papers required by Section 1 of Paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit, excluding the testimony taken on the reference to ascertain value.

(2) All pleadings, motions, exceptions, claims and answers on file herein; also the certificate of the Secretary of the State of California.

(3) The monition and all proceedings taken, made and returned by the United States Marshal to this Court.

(4) The final decree and notice of appeal.

(5) The assignment of errors.

FARNHAM P. GRIFFITHS,  
 McCUTCHEN, OLNEY, MANNON &  
 GREENE,  
 Proctors for Petitioner and Appellant.

[Endorsed]: Filed Jan. 19, 1928. [1\*]

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[Title of Court and Cause.]

STATEMENT OF CLERK UNDER RULE 4.

PARTIES:

Petitioner: Lancaster Steamship Company, a  
 Corp. (Owners of S. S. "Lancaster.")

Claimants: County of Alameda; State Compensation Insurance Fund; Daniel Sullivan.

PROCTORS:

For Petitioner: FARNHAM P. GRIFFITHS,  
 Esq., and McCUTCHEN, OLNEY, MANNON  
 & GREENE.

For County of Alameda, Claimant: EARL WARREN,  
 Esq., and ROBERT M. FORD, Esq.

For State Compensation Insurance Fund and  
 Daniel Sullivan, Claimants: FRANK J.  
 CREEDE, Esq., and W. J. O'CONNOR, Esq.

PROCEEDINGS:

1926.

June 7. Filed petition of Lancaster Steamship

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\*Page-number appearing at the foot of page of original certified Apostles on Appeal.



Company, a corporation, for exoneration from or limitation of liability.

[2]

Filed order of reference to U. S. Commissioner for appraisalment.

July 15. Filed report of U. S. Commissioner on appraisalment.

19. Filed admission of service of notice of filing appraisalment.

22. Filed order approving appraisalment.

28 Filed bond covering appraised value of SS. "Lancaster" with interest, etc.

Filed restraining order.

Filed order for monition.

Issued monition.

Set. 14. Filed marshal's return of service and publication of notice of monition and citation.

28. Proclamation duly made and default entered.

Filed decree of default, as to all claimants not having filed claims or answers.

Oct. 16. Filed report of U. S. Commissioner on claims filed.

19. Filed claim of County of Alameda.

Filed claim of State Compensation Insurance Fund.

Filed claim of Daniel Sullivan.

1927.

July 16. Filed exceptions to petition (County of Alameda).

*Lancaster Steamship Company*

Filed exceptive allegations (County of Alameda).

Filed notice of motion for dismissal of petition for want of jurisdiction (County of Alameda).

Sept. 26. The motion to dismiss was this day argued and submitted. (Hon. Frank H. Kerrigan, Judge.)

Oct. 24. Filed certificate of Secretary of State. Filed order that motion to dismiss petition as to County of Alameda be granted.

Nov. 16. Filed three objections to claims.

Dec. 13. Filed decree as to County of Alameda. Filed order staying proceedings. [3]

1928.

Jan. 9. Filed order staying proceeding during pendency of appeal.

10. Filed notice of appeal.

19. Filed assignment of errors.

Filed bond on appeal (\$250.00).

Filed praecipe for apostles on appeal.

[4]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 19,048.

In the Matter of the Petition of LANCASTER STEAMSHIP COMPANY, a Corporation, for Exoneration from or Limitation of Liability.

PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY.

To the Honorable, the Judges of the Southern Division of the United States District Court, for the Northern District of California, Sitting in Admiralty:

The petition of Lancaster Steamship Company, a corporation, for exoneration from or limitation of liability, civil and maritime, alleges as follows:

I.

That petitioner, Lancaster Steamship Company, a corporation, at all times herein mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New York.

II.

That at all of the times herein mentioned, petitioner was and it now is the sole owner of that certain American steamer known as the "Lancaster," her engines, boats, boilers, tackle, apparel and furniture. That at all times herein mentioned

said vessel was fully officered, manned, equipped and supplied and was in all respects seaworthy.

### III.

That said steamer "Lancaster," at all times herein mentioned was and now is a vessel of the United States, used and employed by your petitioner in the business of commerce and [5] navigation upon the navigable waters of the United States; that said vessel is now or soon will be within the waters of San Francisco Bay and within the Northern District of California and the jurisdiction of this Honorable Court.

### IV.

That on or about the 7th day of January, 1926, the said steamer was lying at the Port of Oakland, California, alongside of the dock of the Encinal Terminals Company, a corporation, situated on the Oakland Estuary at Alameda, California; that on said date the said steamer "Lancaster," her master, owners and agents, entered into a contract with the Shipowners & Merchants Tugboat Company, a corporation, whereby said Shipowners & Merchants Tugboat Company contracted and agreed to move said steamer from said dock and navigate the said steamer "Lancaster" down said Oakland Estuary and into the waters of San Francisco Bay; that pursuant to said contract, at about 3:45 P. M. of January 7, 1926, said Shipowners & Merchants Tugboat Company's tug "Sea Lion," in command of a competent, licensed pilot, to wit, Captain E. W. Groeper, made fast to the

starboard quarter of the "Lancaster"; that said Captain Groeper, as pilot and captain of said tug-boat "Sea Lion," went up to and at all times herein mentioned remained on the bridge of the "Lancaster" and took entire charge of the navigation of said vessel; that under the sole orders and directions of the captain of the tug thus given from the bridge of the steamer "Lancaster," the tug "Sea Lion" towed or moved said steamer "Lancaster" from said wharf and out into the Oakland Estuary and down said estuary.

## V.

That the County of Alameda owned, operated and maintained a drawbridge, known as the "Webster Street Bridge," across the Oakland Estuary. Said bridge connected the cities [6] Alameda and Oakland and was used by street-cars, vehicles and pedestrians in passing from one city to the other. The draw of said bridge was opened from time to time by the operator thereof to permit the passage of vessels and the opening of the draw constituted an invitation and representation to vessels lawfully navigating the channel of the said Oakland Estuary that they might proceed in safety through the draw. That said tug with the said steamship in tow, as aforesaid, was lawfully navigating the channel of said Oakland Estuary. While said tug and tow were approaching said Webster Street Bridge, the master of the tug, from the bridge of the steamer "Lancaster," gave the usual signal required for the opening of the draw. As the tug and tow were proceeding slowly and cautiously down

said Estuary and while observing all rules and regulations applicable to vessels in their situation, said steamer "Lancaster," without fault on her part, sheered to port a short distance above said draw. Said Pilot Groeper, from the bridge of said steamer, endeavored to stop the sheer of said steamer by stopping and reversing her engines and dropping her anchors and putting her helm hard aport. Notwithstanding these precautions and maneuvers, the stem of the steamer "Lancaster" came in contact with the eastern end of a span of the bridge and pushed it from the piers on which it rested, so that it fell into the water. That said steamer at said time was injured and suffered physical damages.

#### VI.

That the engines, telegraph, steering apparatus and all other gear and appliances on board said steamer "Lancaster" at all times herein mentioned were all in good order and condition; that the officers and crew of said steamer "Lancaster," acting under the orders and directions of said Pilot Groeper, promptly and efficiently executed all orders and directions given by him. [7]

#### VII.

On information and belief, at the time said tug and tow sheered to port, said bridge was not completely open, but on the contrary the eastern end of said span had been negligently swung to the Oakland side by the operator of said bridge; that said negligent conduct on the part of said bridge

operator was the cause, or a contributing cause, to said collision.

### VIII.

That said collision and said damages sustained by the County of Alameda and all other persons in connection with said collision was caused without any fault or negligence on the part of said steamer "Lancaster," or any of her officers and crew, or of petitioner, or of any of them.

### IX.

That the Webster Street Bridge in the County of Alameda was constructed of steel; each end of the span rested in concrete piers, but was not anchored or fastened to the said piers; that the draw of the bridge was about 110 feet in width in each channel; that the bridge was constructed about 30 years ago at a time when vessels of much smaller size than at present navigating the Estuary were accustomed to navigate; in fact the location and position of the drawbridge constituted a menace to navigation and a nuisance and involved risk of damage to vessels lawfully navigating in the channel. On information and belief, the War Department of the United States Government, prior to the time of said collision, ordered said County of Alameda to remove said bridge. On information and belief, the owner of said bridge had agreed to remove it in accordance with the requirements of the War Department of the United States Government, but had neglected up to the time of the collision to have the work done; and, [8] on information and belief, a tunnel under said Estuary

at about the same place where the Webster Street Bridge was located is now being constructed, and, on information and belief, the War Department of the United States Government has ordered said County of Alameda to remove said bridge as soon as said tunnel has been constructed.

#### X.

That thereafter and heretofore, to wit, on or about the 28th day of January, 1926, the County of Alameda, as owner of said Webster Street Bridge, commenced an action against petitioner, as owner of said steamer "Lancaster," and others, in the Superior Court of the State of California, in and for the County of Alameda, claiming damages in the sum of \$200,000, by reason of said collision. That pursuant to Section 394 of the Code of Civil Procedure of the State of California, said Court made an order transferring said action to the Superior Court of the State of California, in and for the County of Santa Clara; that said suit is now pending in said last-named court. That the name of the attorney for said County of Alameda is Earl Warren, Esq., and the address of said attorney is Court House, Oakland, California.

#### XI.

That said collision and said injury to said bridge and all other losses, destruction, damages or injuries, whether of or to the life or person or property or goods or merchandise, done, occasioned or incurred on said voyage, or due to or in anywise arising out of said collision hereinabove described,



were done, occasioned or incurred without the consent or privity, or knowledge, or design, or neglect of petitioner herein, or of any of its officers, agents or servants. [9]

## XII.

That neither the officers or crew of said steamer "Lancaster" who were acting under the orders and direction of the said tugboat Captain Groeper, or any of them, were negligent in respect to said accident in any respect; that said accident, if not inevitable, was caused by the fault or negligence of said Shipowners & Merchants Tugboat Co., and its servants on board said tug "Sea Lion," combined with the negligence of said bridge-tender in negligently failing to keep said bridge open.

## XIII.

That as hereinbefore alleged, the said Pilot Groeper and the officers and crew of the said tugboat "Sea Lion" were engaged by the steamer, pursuant to agreement with the Shipowners & Merchants Tugboat Company, a corporation; that the said pilot and master and crew of the Tugboat Company at all times herein mentioned were the employees of the Shipowners & Merchants Tugboat Company, and were not the employees of said steamer "Lancaster," or her owners, agents or master; that said master of the said tugboat was in control of the navigation and operation of said steamer "Lancaster" and said tug, and gave all orders and directions in their navigation, and petitioner alleges that if it be found that said steamer "Lancaster" and/or said tug "Sea Lion" were

negligently navigated in any respect, said negligence was the negligence of the said pilot or master and/or crew, or some of them, or said tug "Sea Lion," for whose negligence petitioner is not liable.

#### XIV.

That the voyage upon which the aforementioned accident occurred and in connection with which the aforementioned suit arose, and as to which petitioner seeks exoneration from or limitation of liability, was from Portland, Maine, to the Port [10] of Seattle, Washington; that said voyage terminated at the Port of Seattle, Washington, on or about the 14th day of January, 1926; that the total value of all of the petitioner's interest in said steamer "Lancaster" at the termination of said voyage amounts to and does not exceed the sum of \$158,770.45; that the freight pending at the time of the termination of and for said voyage amounted to \$80,430.80; that petitioner has a claim against said Shipowners & Merchants Tugboat Company for damages suffered by it by reason of the injuries to said steamship "Lancaster" sustained in said collision.

#### XV.

That said County of Alameda is claiming damages against your petitioner in the sum of \$200,000; that at the time of said collision several persons were on said bridge and thrown into the water and injured; that traffic, including street-car transportation, across said bridge was interrupted and stopped; that petitioner is informed and believes,

and therefore alleges, that other suits and claims may be filed against it, which in the aggregate will greatly exceed the value of petitioner's interest in said steamer "Lancaster" and the freight pending upon the termination of the voyage upon which she was engaged at the time of said collision.

## XVI.

That in said suit against your petitioner, now pending in the Superior Court of the State of California, in and for the County of Santa Clara, said County of Alameda has joined the Shipowners & Merchants Tugboat Company, the owner of the said tug "Sea Lion," as a party defendant. That in the complaint on file in said suit, it is alleged that said collision and damage was caused by the joint negligence of said Shipowners & Merchants Tugboat Company and your petitioner. [11] That said Shipowners & Merchants Tugboat Company has filed, and there is now pending, in this court its petition praying for a limitation of liability on account of the claims and demands arising out of said collision with said bridge. That this Honorable Court in said limitation proceeding has entered its order restraining said County of Alameda from prosecuting said suit in said state court. That the rights and claims of all parties arising out of the matters aforesaid can be adjudicated and determined only by the consolidation in this Honorable Court of said limitation proceeding instituted by said Shipowners & Merchants Tugboat Company and this limitation proceeding

instituted by your petitioner. That it would be in the furtherance of the ends of justice and would prevent a multiplicity of suits to have petitioner's petition for limitation of liability proceed along with and at the same time as the said petition of Shipowners & Merchants Tugboat Company in order that it may be determined in one proceeding on which of the respective petitioners in this court the ultimate liability, if any, should rest, or the proportion of liability, if any, which each should bear.

#### XVII.

That your petitioner desires to contest its liability and the liability of said steamer "Lancaster" for each and every of the injuries, destructions, losses and damages, whether of or to life or person or property or goods or merchandise, done or caused, occasioned or incurred upon the voyage hereinbefore set forth, and particularly done, caused, occasioned or incurred by reason of the collision of said steamer "Lancaster" with said Webster Street Bridge, and in the event petitioner shall be found liable for any such losses, destruction, damages or injuries, or any part thereof, that it [12] does hereby claim the benefit of the limitation of liability provided for in Sections 4283 to 4289, inclusive, of the Revised Statutes of the United States, and also hereby claim the benefit of the limitation of liability provided for in the Act of Congress of June 26, 1884, Chapter 121, and particularly the benefits of Section 18 of said Act, and also hereby claims the benefit of the limitation

of liability provided for in Section 4289 of the Revised Statutes of the United States, as amended by act of June 19, 1886, Chapter 421, and particularly Section 4 of the last-mentioned Act, and also hereby claims the benefit of any and all acts of the Congress of the United States, if any, amendatory or supplementary to the several sections and acts aforesaid, or any thereof, and petitioner is now ready, able and willing, and hereby offers, to give its stipulation or stipulations with sufficient sureties conditioned for the payment into this court by petitioner of the value of petitioner's interest in said steamer "Lancaster," if required, as she was immediately after the termination of the voyage upon which the collision to said Webster Street Bridge occurred, with interest thereon, together with the freight pending for and at the termination of the said voyage, such payment to be made whenever the same shall be ordered herein. Petitioner also hereby offers to surrender its contingent claim against Shipowners & Merchants Tugboat Company, or so much thereof as may be lawfully required, and to give its stipulation with sufficient sureties conditioned for the payment thereof into court, if and when, and in the manner ordered by the court.

#### XVIII.

While not in any way admitting that petitioner is under any liability for the injuries, losses and damages done, occasioned [13] or incurred aforesaid, but, on the contrary, claiming and reserving the right to contest in this or any court any lia-

bility therefor, your petitioner claims it is entitled to have its liability, if any, limited in the premises to the value of the aforesaid steamer "Lancaster," as of the termination of the voyage hereinbefore described and freight pending for or at the termination of the said voyage.

### XIX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, your petitioner prays that this Court will order due appraisement to be had of the interests of your petitioner in the said American steamer "Lancaster," her engines, boats, boilers, tackle, apparel and furniture, as the same were as of the termination of the voyage in this petition set forth, and due appraisement of the interests of your petitioner in the amount of freight pending, if any, at the termination of said voyage; that this Honorable Court do make an order for the payment of said appraised value into court, or for the giving of a stipulation with sureties for the payment thereof into court whenever the same shall be ordered with interest, and, upon compliance with said order, that this Honorable Court do issue a monition against said County of Alameda and all other persons claiming damages against your petitioner, or against said American steamer "Lancaster" by reason of any loss, damage, destruction or injury, whether of or to the life of persons or property, done, incurred, occasioned, or arising upon said

voyage, citing them and each of them to appear before this Court and make due proof of their respective claims at or before a time [14] to be designated in said writ according to the law and rules and practice of this Court, and that this Honorable Court also enjoin or otherwise restrain the prosecution of any or all suit or suits, action or actions, libel or libels, or legal proceedings of any manner or description, except in the present proceedings, against your petitioner or against the said American steamer "Lancaster," in respect to any injuries, losses, damages, destructions, and any and all claims occurring or arising upon the voyage aforesaid, and that this Honorable Court do adjudge that neither your petitioner nor the said American steamer "Lancaster," is or are liable to any extent for any such loss, damage, destruction or injury, but if or in the event this Honorable Court should adjudge that your petitioner or said steamer is liable to any extent therefor, that such liability be limited to the amount and value of your petitioner's interest in said American steamer "Lancaster," her engines, boats, boilers, tackle, apparel and furniture, at the termination of the aforesaid voyage, and her freight pending at the termination of said voyage, as hereinbefore in this petition set forth; and as such values may be determined by the appraisements of such interests, as hereinbefore prayed, and that in the event of petitioner being held liable, the moneys paid or secured to be paid into court as aforesaid be divided and prorated among the several claimants

in proportion to the amount of their respective claims duly approved and confirmed, saving to all parties any priority to which they may be entitled legally; that your petitioner shall have such further and additional relief as may be deemed meet and just in the premises.

FARNHAM P. GRIFFITHS,  
McCUTCHEN, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner [15]

State of California,  
City and County of San Francisco,—ss.

W. J. Edwards, being first duly sworn, deposes and says:

That he is a member of the firm of Norton, Lilly & Co., a copartnership. That said firm as the agent of Lancaster Steamship Company, a corporation, petitioner herein. That no officer of said petitioner is within the State of California. That he makes this verification for and on behalf of said petitioner. That he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

W. J. EDWARDS.



Subscribed and sworn to before me this 7th day of June, 1926.

[Seal] FRANK L. OWEN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Jun. 7, 1926. [16]

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[Title of Court and Cause.]

### ORDER FOR APPRAISEMENT.

It appearing to this Court that a verified petition for limitation of liability has been heretofore filed herein by the above-named petitioner and that application has been made for an order appointing a Commissioner to make, and directing him to make, an appraisement of the value of the interest of said petitioner in the steamship "Lancaster," her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and her freight pending at the termination of the voyage mentioned in said petition; and the Court being fully advised in the premises,—

NOW, THEREFORE, IT IS HEREBY ORDERED that the above-entitled matter be and the same is hereby referred to the Honorable Francis Krull, United States Commissioner for the Northern District of California, for the purpose of making due appraisement of the value of the interest of Lancaster Steamship Company, a corporation, petitioner herein, in the steamship "Lancaster," her engines, boilers, boats, tackle, apparel,

furniture and appurtenances, and her freight pending at the termination of that certain voyage mentioned in said petition, upon which voyage said steamship collided with the Webster Street Bridge, County of Alameda, on or about the 7th day of January, 1926; and [17]

IT IS FURTHER ORDERED that all persons interested in the matter of said appraisalment be cited in the manner hereinafter provided to appear before said Commissioner at his office in the Post Office Building, City and County of San Francisco, on Friday, the 18th day of June, 1926, at the hour of 10 A. M., and then and there produce any evidence they may have touching the value of the interest of said petitioner in said steamship and her freight pending at the termination of the voyage mentioned in said petition; and

IT IS FURTHER ORDERED that said citation be made by said Clerk, causing the following notice to be published in "The Recorder," a newspaper of general circulation in the City and County of San Francisco, for seven successive issues, commencing with Tuesday, the 8th day of June, 1926, and concluding with Tuesday, the 15th day of June, 1926.

In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY.

In the Matter of the Petition of LANCASTER STEAMSHIP COMPANY, a Corporation, for Exoneration from or Limitation of Liability.

NOTICE OF APPRAISEMENT.

WHEREAS, LANCASTER STEAMSHIP COMPANY, a corporation, has filed in the above-entitled court a petition for exoneration from or limitation of liability for all injuries, losses and damages occasioned or incurred upon that certain voyage of its steamship "Lancaster," leaving the Port of Portland, Maine, and terminating at the Port of Seattle, Washington, on or about the 14th day of January, 1926, upon which voyage said steamship collided with the Webster Street Bridge, situate in the County of Alameda on January 7th, 1926; and

WHEREAS, an order has been duly entered in said cause, appointing and directing the Honorable Francis Krull, United States Commissioner, to make due appraisement of the value of the interest of said petitioner in said steamship and her freight pending at the termination of said voyage; [18]

NOW, THEREFORE, all persons interested in the matter of such appraisement are hereby cited and admonished to appear before said Commissioner

at his office in the Post Office Building, at the corner of Seventh and Mission Streets, in the City and County of San Francisco, State of California, on Friday, the 18th day of June, 1926, at the hour of 10 A. M., and then and there produce before said Commissioner any evidence they may have touching on the value of the interest of said petitioner in said steamship and her freight pending at the termination of said voyage.

By order of Court:

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk.

IT IS FURTHER ORDERED that a copy of said notice be served upon Earl Warren, Esq., District Attorney for the County of Alameda, not less than five days before said hearing.

Made and entered this 7th day of June, 1926.

A. F. ST. SURE,  
District Judge.

[Endorsed]: Filed Jun. 7, 1926. [19]

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[Title of Court and Cause.]

REPORT OF COMMISSIONER ON APPRAISE-  
MENT.

To the Southern Division of the District Court of the United States for the Northern District of California, Third Division, In Admiralty, and the Judges Thereof:

PURSUANT to an order made in the above-entitled matter referring the same to me to appraise the value of the interest of Lancaster Steamship Company, a corporation, petitioner herein, in the steamship "Lancaster," her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and her freight pending at the termination of that certain voyage mentioned in the petition herein, upon which voyage said steamship collided with the Webster Street Bridge in the County of Alameda, State of California, on or about the 7th day of January, 1926, I have to report that I was attended by the proctors for the respective parties and thereupon the testimony hereunto attached and hereby made a part hereof was taken as therein set forth and the proceedings were had as therein stated.

After a careful consideration of all the evidence adduced before me, I do find as follows:

1. That the value of the steamship "Lancaster" on January 7, 1926, in sound condition, immediately after her collision with the said Webster Street Bridge was. . . . \$230,000.00  
[20]
2. That before said collision the said vessel was in a damaged condition caused by heavy weather on the voyage to this coast, and that the reasonable cost of repairing said damage that was at the time of the collision unrepaired was. . \$ 8,142.60

3. That the reasonable cost of repairing the damage to the steamship "Lancaster" caused by the collision with the Webster Street Bridge was .....\$ 6,137.25
4. That the value of the said steamship "Lancaster" immediately after said collision was \$230,00, her sound value, less the reasonable cost of restoring her to a sound condition, amounting to \$14,279.85 or .....\$215,720.15
5. That the value of the fuel, supplies and stores on the said steamship "Lancaster" at the time of the collision was .....\$ 10,000.00
6. That the amount of the freight pending at the termination of the voyage was .....\$880,139.23

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Total.....:.....\$305,859.38

As a conclusion from the foregoing I do find and report the value of the interest of the Lancaster Steamship Company, a corporation, petitioner, in the steamship "Lancaster," her tackle, apparel, furniture and appurtenances, and her freight then pending at the termination of the voyage immediately after the collision with the Webster Street Bridge as set forth in the petition filed in this matter, to be \$305,859.38. All of which is respectfully submitted.

Dated, July 15, 1926.

[Seal]

FRANCIS KRULL,  
Commissioner.

[Endorsed]: Filed Jul. 15, 1926. [21]

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[Title of Court and Cause.]

ADMISSION OF SERVICE OF NOTICE OF  
FILING APPRAISEMENT.

Due admission of service of notice of filing in open court of the report of Commissioner Francis Krull, appraising the interest of said petitioner in the steamship "Lancaster," as well as the value of her freight pending at the termination of her voyage on or about the 14th day of January, 1926, is admitted this 16th day of July, 1926.

THACHER & WRIGHT,  
Proctors for Claimant, Shipowners and Merchants  
Tugboat Company.

EARL WARREN,  
District Attorney,  
Proctor for Alameda County.

By J. F. COAKLEY,  
Asst. District Atty.,  
Proctors for County of Alameda.

[Endorsed]: Filed Jul. 19, 1926. [22]

[Title of Court and Cause.]

ORDER APPROVING APPRAISEMENT.

It appearing to the Court that due and regular notice of hearing before the United States Commissioner of the appraisement of the petitioner's interest in the steamship "Lancaster" and her freight pending on the voyage referred to in the petition has been given as required by the order and rules of this Court, and it appearing that the report of said Commissioner has been filed herein and that notice thereof has been duly and regularly given and that no exceptions have been filed to said report within the time required by the rules of this Court, or at all,—

NOW, THEREFORE, IT IS HEREBY ORDERED that the report of the Honorable Francis Krull, United States Commissioner, heretofore filed herein on the 15th day of July, 1926, appraising the value of the interest of Lancaster Steamship Company, a corporation, in the steamship "Lancaster," her tackle, apparel, furniture, appurtenances, fuel, supplies and stores, and her freight pending at the termination of that certain voyage referred to in the petition on file herein, at the sum of \$305,859.38 be and the same is hereby approved.

[23]

And be it further ORDERED that said petitioner file with this Court an undertaking with good and sufficient surety thereon in the sum of \$305,859.38,



with interest thereon from the — day of July, 1926, at the rate of 6% per annum, conditioned for the payment into this court by said petitioner of the value of its interest in said steamship "Lancaster," her tackle, apparel, furniture and appurtenances, her fuel, supplies and stores, and in her freight pending, as fixed by the report of said Commissioner heretofore filed and approved herein, whenever the same or any part thereof may be ordered by this court.

Made and entered this 22 day of July, 1926.

BOURQUIN,  
District Judge.

[Endorsed]: Filed Jul. 22, 1926. [24]

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[Title of Court and Cause.]

### RESTRAINING ORDER.

It appearing to this Court that a libel and petition has been filed herein by the above-named petitioner, praying for exoneration from or limitation of liability, as owner of the steamship "Lancaster," for any injury, loss or damage, occasioned or incurred upon that certain voyage of said steamship "Lancaster," referred to in said petition; and

It appearing that Francis Krull, Esq., United States Commissioner, pursuant to an order of this Court, has filed his report, appraising the petitioner's interest in said steamship "Lancaster" and

her freight pending, and that said report has been in all respects approved; and

It further appearing that a stipulation with surety duly approved has been filed with this Court by the petitioner herein, conditioned that the petitioner will pay into this court, whenever the same may be ordered by this court or by an Appellate Court, if an appeal intervene, the aforesaid appraised value of the interest of said petitioner in the steamship "Lancaster" and her freight pending, together with interest thereon; and [25]

It further appearing that, pursuant to an order of this court, a monition has issued against all corporations or persons claiming damages for any loss, damages or injury to persons or to property or by loss of life, occurring or arising upon that certain voyage of the steamship "Lancaster," referred to in said petition, and the Court being fully advised in the premises,—

NOW, THEREFORE, IT IS HEREBY ORDERED that each and every corporation, person or persons, having or claiming to have any demands against Lancaster Steamship Company, either severally or jointly with others, or said steamship "Lancaster," for any damage, loss or injury to persons or to property, or by loss of life, occurring or arising upon that certain voyage of the steamship "Lancaster," terminating at the port of Seattle, Washington, on or about the 14th day of January, 1926, upon which voyage said steamship "Lancaster" collided with the Webster Street Bridge,

Alameda County, on or about the 7th day of January, 1926, be and they are hereby enjoined and restrained from beginning, prosecuting, proceeding in or maintaining any such suit or suits, against said Lancaster Steamship Company, a corporation, or against said company and others, or against said steamship "Lancaster," save in this proceeding; and

IT IS FURTHER PARTICULARLY ORDERED that the County of Alameda, plaintiff in that certain action against Lancaster Steamship Company and others, being maintained in the Superior Court of the State of California, in and for the County of Santa Clara, and number therein 32,927, together with its agents, officers and attorneys, be and it is, and the agents, officers and attorneys of said County of Alameda, are and each of them is hereby enjoined and restrained from further [26] prosecuting and proceeding in said action.

Made and entered this 28 day of July, 1926.

BOURQUIN,  
District Judge.

[Endorsed]: Filed Jul. 28, 1926. [27]

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[Title of Court and Cause.]

ORDER FOR MONITION.

It appearing that an admiralty stipulation duly approved by this Court has been filed herein, con-

ditioned that petitioner will pay into this court, whenever the same shall be ordered by this court or by an Appellate Court, in the event that an appeal intervenes, the appraised value of the interest of said petitioner in the steamship "Lancaster," her tackle, apparel, furniture and appurtenances, and her freight pending at the termination of that certain voyage referred to in the petition, on which the steamship "Lancaster" collided with the Webster Street Bridge on or about the 7th day of January, 1926,—

NOW, THEREFORE, IT IS ORDERED that a motion issue out of this Court against all persons claiming damages by reason of injuries to persons or to property or by loss of life, occurring or arising out of that certain voyage of the steamship "Lancaster," terminating at the port of Seattle on or about the 14th day of January, 1926, upon which voyage said steamship "Lancaster" collided with the Webster Street Bridge on or about the 7th day of January, 1926, citing them to appear before this Court and make proof of their respective claims before the Honorable Francis Krull, United States Commissioner, at or before a certain day to be named in said [28] writ, not less than thirty days from the issuing of the same, and also citing them to appear and answer in this cause; and

BE IT FURTHER ORDERED that notice of the issuance of said monition be given by the United States Marshal, causing a citation, setting forth the substance of said monition to be published in a daily newspaper in the City and County

of San Francisco, State of California, published daily, except Sunday, for seven days, and thereafter once a week until the return day of said monition, which day shall not be less than thirty days after the first publication of said citation; and

BE IT FURTHER ORDERED that further notice of the issuance of said monition be given by the United States Marshal, causing copies of said citation to be posted in three public places in the City and County of San Francisco, State of California; and

BE IT FURTHER ORDERED that service of copies of said citation be made upon claimants who have commenced suits against the petitioner or appeared herein for losses alleged to have arisen or occurred upon the voyage mentioned in the petition filed herein by serving a copy of said citation upon one of the attorneys residing in this district for said claimants, by leaving the same with a responsible person at the office of said attorney, and by causing copies of said citation to be deposited in the United States Postoffice in the City and County of San Francisco in a sealed envelope, with postage thereon fully prepaid, and addressed to the said claimants at their place of business, so far as the same is known.

And that said Marshal thereafter make due return of what he has done in the premises.

Made and entered this 28 day of July, 1926.

BOURQUIN,

District Judge.

[Endorsed]: Filed Jul. 28, 1926. [29]

[Title of Court and Cause.]

MONITION.

The President of the United States of America to  
The Marshal for the Northern District of California, GREETING:

WHEREAS, in the above-entitled matter a libel and petition has been filed in the District Court of the United States, for the Northern District of California, Southern Division, on the 7th day of June, 1926, by Lancaster Steamship Company, a corporation, as owner of the steamship "Lancaster," her tackle, apparel, furniture and appurtenances, and her freight pending, praying for an exoneration from or limitation of its liability concerning any and all loss, damage or injury either to persons or to property, or by loss of life, occurring or arising upon that certain voyage of the steamship "Lancaster," terminating at Seattle, Washington, on or about the 14th day of January, 1926, upon which voyage said steamship "Lancaster" collided with the Webster Street Bridge, Alameda County, California, on or about the 7th day of January, 1926, for the reasons and causes in said libel and petition mentioned, and praying that a monition of this Court in that behalf be issued and that all persons claiming damages for any such loss, damage or injury, may be thereby [30] cited to appear before said Court and make due proof of their respective claims, and all proceedings being had, and

if it shall appear that the petitioner is not liable for any such loss, damage and injury, it may be so finally decreed by this Court; and

WHEREAS, by order of this Court the value of the interest of said petitioner in the steamship "Lancaster," her tackle, apparel, furniture and appurtenances, her fuel, supplies and stores, and in her freight pending at the termination of said voyage, has been appraised at the sum of \$305,859.38; and

WHEREAS, pursuant to the requirements of said order, said petitioner has filed a stipulation for said sum of \$305,859.38, with good and sufficient surety, duly approved by this Court, whereby said petitioner and said surety are obliged to pay said appraised value, or any part thereof, with interest at 6% per annum from the 28th day of July, 1926, into this court, whenever the same may be ordered;

NOW, THEREFORE, all persons or corporations claiming damages by reason of any injuries to persons or to property or for loss of life, occurring or arising upon that certain voyage of the steamship "Lancaster," terminating at the port of Seattle, Washington, on or about the 14th day of January, 1926, upon which said voyage said steamship collided with the Webster Street Bridge, Alameda County, on or about the 7th day of January, 1926, are directed and admonished to appear before this Court and make due proof of their respective claims, and we do hereby empower and strictly

charge and command you to cite all corporations, person or persons, claiming damages by reason of any damage, loss or injury to persons or to property, or by loss of life, occurring or arising upon that certain voyage of the steamship "Lancaster," terminating at the port of Seattle, Washington, on or about the 14th day of January, 1926, [31] upon which voyage said steamship collided with said Webster Street Bridge, Alameda County, on or about the 7th day of January, 1926, to appear before said Court and make due proof of their respective claims before Honorable Francis Krull, United States Commissioner, at his office in the Postoffice Building, corner of Seventh and Mission Streets, in the City and County of San Francisco, State of California, on or before Tuesday, the 14th day of September, 1926, at 10 o'clock in the forenoon of said day;

AND YOU ARE HEREBY COMMANDED to cite such claimants to appear and answer the allegations of the said libel and petition herein on or before the said last-named date, or within such further time as the Court may grant, and to have and receive such relief as may be due.

And what you have done in the premises do then make return to this Court together with this writ.

WITNESS the Honorable FRANK H. KERRIGAN, Judge of the Southern Division of the United States District Court, for the Northern Dis-



trict of California, this 28th day of July, 1926, and of our Independence the 151st.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk.

[Endorsed]: Filed Sep. 14, 1926. [32]

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[Title of Court and Cause.]

MARSHAL'S RETURN TO MONITION.

In obedience to the annexed writ of monition, I HEREBY CERTIFY AND RETURN that public notice of said monition and of the annexed citation was given by me by publication thereof in "The Recorder," a newspaper published in the City and County of San Francisco, State of California, daily except Sunday, for seven days, commencing on July 29th, 1926, and thereafter once a week until the return day of said monition, to wit: September 14th, 1926, as appears from the affidavit of E. C. Luchessa, which is attached hereto and made a part of this return.

I FURTHER CERTIFY that notice of the issuance of said monition was given by me by causing copies thereof, together with the attached citation, to be posted in three public places in the City and County of San Francisco, State of California, to wit: Postoffice Building, City Hall and Hall of Justice.

I FURTHER CERTIFY that notice of said monition and citation was served upon Messrs. Thacher & Wright on the 30th day of July, 1926, by delivering to and leaving with T. A. Thacher, a member of said firm, a copy of said attached notice of monition and a copy of said attached citation. [33]

I FURTHER CERTIFY that notice of said monition and citation was served upon Earl Warren, District Attorney of Alameda County, on the 30th day of July, 1926, by delivering to and leaving with the Chief Clerk of said Earl Warren a copy of said attached notice of monition and a copy of said attached citation.

I FURTHER CERTIFY AND RETURN that on the 30th day of July, 1926, I deposited in the United States Postoffice at San Francisco, California, a sealed envelope with the postage thereon fully prepaid, addressed to each of the hereinafter named parties at the respective addresses set opposite their names, each envelope containing a true and correct copy of said annexed citation and a true and correct copy of the annexed notice of said monition:

The Shipowners & Merchants Tugbot Co., Pier  
15, San Francisco, California;

The County of Alameda, Care of Board of Supervisors of Alameda County, Hall of Records, Oakland, California.

And, as commanded in said writ of monition, I return the same herewith, together with the cita-

tion issued in said matter and the said notice of monition.

Dated this 14th day of September, 1926.

FRED L. ESOLA,

United States Marshal for the Northern District  
of California,

By Geo. H. Burnham,  
Deputy.

[Endorsed]: Filed Sep. 14, 1926. [34]

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In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 19,048.

In the Matter of the Petition of LANCASTER STEAMSHIP COMPANY, a Corporation, for Exoneration from or Limitation of Liability.

DECREE OF DEFAULT.

It appearing to this Court that the time has elapsed within which any and all persons having any claims for loss of life or injury to persons or property, arising or occurring on that certain voyage of the steamship "Lancaster," terminating at the port of Seattle on or about the 14th day of January, 1926, on which voyage said steamship collided with the Webster Street Bridge, Alameda County, on or about the 7th day of January, 1926, were required by monition, duly and regularly is-

sued out of this court, to appear and make due proof of their respective claims before Francis Krull, United States Commissioner, and to answer the allegations of the petition herein under penalty of default;

And it appearing that on the return day of said monition and the citation made and issued by the United States Marshal pursuant thereto, to wit, on the 14th day of September, 1926, the said Marshal made his return herein, and that the making of the proclamation was duly and regularly continued to the 28th day of September, 1926, and that on said 28th day of September, 1926, a proclamation was duly made in open court, and that upon the making of said proclamation this Court ordered that the default be entered of all persons who have not appeared and filed such claims as they may have had,— [35]

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the default be and the same is hereby entered of all corporations and persons having claims for any damage, loss of life or injury to persons or to property, occurring or arising upon that certain voyage of the steamship "Lancaster," terminating at the port of Seattle, Washington, on or about the 14th day of January, 1926, which is referred to in the petition on file herein, who have not appeared on or before the return day of said monition or the making of the proclamation herein on the 28th day of September, 1926, at the hour of 10 o'clock A. M., either by filing their claims with the Honorable

Francis Krull, United States Commissioner, or by answering the petition herein.

Made and entered this 28th day of September, 1926.

A. F. ST. SURE,  
District Judge.

[Endorsed]: Filed Sep. 28, 1926.

Entered in Vol. 21 Judg. and Decrees, at page 10.

[36]

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[Title of Court and Cause.]

REPORT OF COMMISSIONER ON CLAIMS.

To the Honorable, the Judges of the Above-entitled Court:

I, FRANCIS KRULL, the Commissioner named in the order of court made and entered in this proceeding on the 28th day of July, 1926, and before whom the claims of all persons for any and all loss, destruction, damage or injury, occurring on that certain voyage of the steamship "Lancaster," terminating at the port of Seattle on or about the 14th day of January, 1926, upon which said voyage said steamship "Lancaster" collided with the Webster Street Bridge, Alameda County, on or about the 7th day of January, 1926, as set forth in the libelant's petition on file herein, were required to be presented on or before the 14th day of September, 1926, do respectfully report that the following claims have been presented to me on or before said last-named date:

Claim of County of Alameda.

Claim of State Compensation Insurance Fund.

Claim of Daniel Sullivan.

Dated, September 14th, 1926.

[Seal]

FRANCIS KRULL,

United States Commissioner for the Northern District of California.

[Endorsed]: Filed Oct. 16, 1926. [37]

[Title of Court and Cause.]

CLAIM OF THE COUNTY OF ALAMEDA.

To the Honorable, the Judges of the Above-entitled Court, and to Francis Krull, Esq., United States Commissioner.

Comes now the County of Alameda, in the above matter and as owner and operator of the Webster Street Bridge in the County of Alameda, State of California, makes claim against the above-named Lancaster Steamship Company, a corporation, as follows:

I.

The County of Alameda is and at all times herein mentioned was a body corporate and politic and one of the political subdivisions of the State of California, incorporated and organized as such under and in accordance with the laws of the State of California.

II.

That petitioner herein, Lancaster Steamship

Company, is now and at all times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of New York, and as claimant is informed and believes and therefore alleges, said Lancaster Steamship Company, a corporation, at all times herein and in said petition mentioned, has been and now is the sole owner of that certain American Steamship known as the "Lancaster" together with its engines, boilers, tackle, apparel and furniture. [38]

### III.

That on the 7th day of January, 1926, and for a long time prior thereto said County of Alameda owned, maintained and operated in the County of Alameda, with the consent and under the direction of the War Department of the United States of America, a certain drawbridge across a body of water known as the Estuary, which said drawbridge connected the City of Oakland and the City of Alameda; that on said 7th day of January, 1926, said bridge, commonly known as the Webster Street Bridge, was in charge of and operated under the direction of the said County of Alameda, by one Daniel P. Sullivan, a bridge-tender and employee of said County of Alameda.

That on said 7th day of January, 1926, said County of Alameda owned and maintained in the middle of said Estuary, adjacent to said Webster Street Bridge, certain fender piles, piling and false work for the protection of said bridge.

## IV.

That on said 7th day of January, 1926, around five o'clock P. M., the steamship "Lancaster" and the tugboat "Sea Lion" were proceeding together in a westerly direction on said Estuary in the vicinity of and towards said Webster Street Bridge, the said tug "Sea Lion" being then and there connected with, tied to, operated in conjunction with and assisting the said steamship "Lancaster."

That the Webster Street Bridge was then and there and for some time prior thereto, had been, wide open, waiting for the said "Lancaster" and the said "Sea Lion" to pass through the open draw.

That while said Webster Street Bridge was thus standing wide open the said steamship "Lancaster" and the said tug "Sea Lion" crashed into, collided with, struck, damaged, injured and destroyed the said Webster Street Bridge and said fender piles, piling and false work. [39]

## V.

That said collision and said damage was caused by the fault and negligence of the Lancaster Steamship Company and the Shipowners and Merchants Tugboat Company and their and each of their agents and servants employed by them and each of them in connection with the operation and maintenance of said "Lancaster" and said "Sea Lion" and without any fault or negligence on the part of said plaintiff.

## VI.

That by reason of the premises and in consequence of said crash and collision and said dam-



age, claimant has sustained damages in the sum of Two Hundred Thousand Dollars (\$200,000.00), no part of which has been paid and for which amount claimant hereby makes claim against petitioner, Lancaster Steamship Company and Shipowners Merchants Tugboat Company, and each of them, jointly and severally.

#### VII.

That Earl Warren is and at all times herein mentioned was the duly appointed, qualified and acting District Attorney of the County of Alameda, State of California; that the Board of Supervisors of said County of Alameda, on the 25th day of January, 1926, by order duly given and made, directed said District Attorney to bring an action in the name of the County of Alameda against the proper parties for damages sustained by said County of Alameda as the result of the above-mentioned collision.

That on the 28th day of January, 1926, in pursuance thereof, Earl Warren as District Attorney of said County of Alameda and on behalf of the said County of Alameda, instituted an action for damages in the sum of Two Hundred Thousand Dollars (\$200,000.00) in the Superior Court of the State of California in and for the County of Alameda, against the following parties: [40]

Norton, Lilly & Company, Imperial Shipping Corporation, a corporation, Lancaster Steamship Company, a corporation, Argonaut Steamship Corp., a corporation, The Shipowners & Merchants Tug-

boat Company, a corporation, J. N. Craven, John Doe, First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe, Tenth Doe, Eleventh Doe, Twelfth Doe, Thirteenth Doe, Fourteenth Doe, Fifteenth Doe, Black White Company, a corporation, *Green* White Company, a corporation, Blue White Company, a corporation, Red White Company, a corporation, Purple White Company, a corporation, Black Gold Company, a corporation, Green Gold Company, a corporation, Blue Gold Company, a corporation, Red Gold Company, a corporation, Purple Gold Company, a corporation, Red Company, a corporation, Blue Company, a corporation, White Company, a corporation, Green Company, a corporation and Black Company, a corporation; said action being number 87,382 and assigned to Department 8; that subsequent thereto said action was transferred to the County of Santa Clara in the State of California where it is still pending being numbered there 32,927.

#### VIII.

Claimant contends that the petitioner, Lancaster Steamship Company, a corporation, has no right to limit its liability nor to proceed as it has proceeded; claimant also contends that the above-entitled court has no jurisdiction in the matter and therefore claimant presents this claim under protest in order to safeguard its rights.

WHEREFORE claimant prays that it be allowed its damages as aforesaid, together with in-

terest and costs and for such other and further relief as it may be entitled to receive.

EARL WARREN,

District Attorney in and for the County of Alameda,

By J. F. COAKLEY,

Assistant District Attorney,

Proctors for Claimant, the County of Alameda.

[41]

State of California,

County of Alameda,—ss.

J. F. Coakley, being first duly sworn, deposes and says: That Earl Warren is the District Attorney of the County of Alameda, State of California; that affiant is an Assistant District Attorney of the said County of Alameda, State of California; that he has read the foregoing claim of the County of Alameda and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

J. F. COAKLEY.

Subscribed and sworn to before me this 13th day of September, A. D. 1926.

[Seal]

FRANK M. OGDEN,

Notary Public in and for the County of Alameda,  
State of California.

[Endorsed]: Receipt of a copy of the within claim of the County of Alameda admitted and copy received this 13th day of Sept., 1926.

McCUTCHEN, OLNEY, MANNON &  
GREENE.

Presented and filed Sept. 14, 1926.

FRANCIS KRULL,  
U. S. Commissioner, Northern District of California,  
at S. F.

Filed Oct. 19, 1926. [42]

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[Title of Court and Cause.]

CLAIM OF STATE COMPENSATION INSURANCE FUND.

To the Honorable, the Judges of the Above-entitled Court, and to FRANCIS KRULL, Esq., United States Commissioner:

Comes now State Compensation Insurance Fund, in the above matter and as Compensation Insurance Carrier for the County of Alameda, State of California, make a claim against the above-named Lancaster Steamship Company, a corporation, on account of certain injuries sustained by Daniel Sullivan as hereinafter set forth.

I.

That the plaintiff, State Compensation Insurance Fund, is, and was, at all times herein mentioned, a Fund organized and existing under and by virtue of Chapter 176 of the Laws of 1913 and amendments thereto of the State of California, the

business and affairs of which are managed and conducted under that name by the Industrial Accident Commission of the State of California, to sue and be sued in the name of State Compensation Insurance Fund as hereinabove entitled; that said State Compensation Insurance Fund is authorized by the said law to conduct the business of insurance in the State of California for the purpose of insuring employers against liability for Compensation payment, under said law, and insuring to employees and other persons the compensation fixed by said law for said employees and their dependents. [43]

II.

That on or about the 7th day of January, 1926, Daniel Sullivan was in the employ of the County of Alameda, as bridge-tender.

That the injuries hereinafter complained of were received by the said Daniel Sullivan in the course of and arose out of his said employment and while he was performing services therein.

That at said time, said employer of said Daniel Sullivan was insured by plaintiff State Compensation Insurance Fund against liability for compensation, as provided by law, by reason of any injuries sustained by its employees while engaged in performance of their duties.

III.

That upon sustaining of the injuries hereinafter complained of, said Daniel Sullivan did claim and make lawful demand for compensation upon said employer, and said employer did notify the plaintiff, said State Compensation Insurance Fund,

of the sustaining of said injuries and of said demand for compensation, whereupon plaintiff State Compensation Insurance Fund paid the liability of said employer for the compensation for which said employer was liable because of the injuries aforesaid.

#### IV.

That petitioner herein, Lancaster Steamship Company, a corporation, is now and at all times herein mentioned has been a corporation duly organized and existing under the laws of the State of New York and at all times in said petition mentioned has been the sole owner and operator of the steam tug "Sea Lion," her engines, boilers, boats, tackle, apparel and furniture. [44]

#### V.

That on the 7th day of January, 1926, and for a long time prior thereto said County of Alameda owned, maintained and operated in the County of Alameda, with the consent and under the direction of the War Department of the United States of America, a certain drawbridge across a body of water known as the Estuary, which said drawbridge connected the City of Oakland and the City of Alameda; that on said 7th day of January, 1926, said bridge, commonly known as the Webster Street Bridge, was in charge of and operated under the direction of the said County of Alameda, by said Daniel Sullivan, a bridge-tender and employee of said County of Alameda.

That on said 7th day of January, 1926, said County of Alameda owned and maintained in the

middle of said Estuary, adjacent to said Webster Street Bridge, certain fender piles, piling and false work for the protection of said bridge.

## VI.

That on said 7th day of January, 1926, around five o'clock P. M. the steamship "Lancaster" and the tugboat "Sea Lion" were proceeding together in a westerly direction on said Estuary in the vicinity of and towards said Webster Street Bridge, the said tug "Sea Lion" being then and there connected with, tied to, operated in conjunction with and assisting the said steamship "Lancaster."

That the Webster Street Bridge was then and there, and for some time prior thereto had been, wide open, waiting for the said "Lancaster" and the said "Sea Lion" to pass through the open draw. [45]

That while said Webster Street Bridge was thus standing wide open the said steamship "Lancaster" and the said tug "Sea Lion" crashed into, collided with, struck, damaged, injured and destroyed the said Webster Street Bridge and said fender piles, piling and false work, thereby violently and suddenly precipitating and throwing said Daniel Sullivan, into the waters of the said Estuary, proximately causing his injuries and damage hereinafter complained of.

## VII.

That said collision and said damage was caused by the fault and negligence of the Lancaster Steamship Company and the Shipowners and Merchants Tugboat Company, and their and each of their

agents and servants employed by them, and each of them, in connection with the operation and maintenance of said "Lancaster" and said "Sea Lion" and without any fault or negligence on the part of said Daniel Sullivan.

### VIII.

That as a proximate result of the premises, said Daniel Sullivan suffered injuries and contusions to his right shoulder, congestion of the lungs, abrasions of the right leg, pain and soreness of the lower back, and that since his aforesaid injuries, said Daniel Sullivan has had increased pains in his appendix, which he is informed and believes and therefore alleges are due to his aforesaid injuries.

### IX.

That as a proximate result of the aforesaid negligence of defendants, said Daniel Sullivan necessarily required and received medical and hospital treatment.

That as a proximate result thereof, plaintiff State Compensation Insurance Fund has necessarily expended certain sums for medical and hospital treatment and compensations as follows:  
[46]

Medical .....	\$15.50
Hospital .....	38.75
Compensation .....	14.88

and that said sums represent the reasonable value thereof.

Claimant is informed and believes, and therefore alleges, it will necessarily incur further expenditures



for such hospital and medical treatment, and for compensation in the total sum of Five Hundred (\$500.00) Dollars and that said sum represents the reasonable value thereof.

Claimant contends that the petitioner, Lancaster Steamship Company, a corporation, has no right to limit its liability nor to proceed as it has proceeded; claimant also contends that the above-entitled court has no jurisdiction in the matter, and, therefore, claimant presents this claim under protest in order to safeguard its rights.

WHEREFORE, claimant prays that it be allowed its damages as aforesaid, together with interest and costs and for such other and further relief as it may be entitled to receive.

FRANK J. CREEDE,  
W. J. O'CONNOR,

Proctors for Claimant State Compensation Insurance Fund. [47]

State of California,  
City and County of San Francisco,—ss.

J. J. Gallagher, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary of State Compensation Insurance Fund; that he has read the foregoing claim and knows the contents thereof, and that the same is true of his own knowledge except as to such matters as are therein stated on information or belief, and as to those matters he believes the same to be true.

J. J. GALLAGHER.

Subscribed and sworn to before me this 30 day of  
Aug., 1926.

[Seal] CHARLES D. O'CONNOR,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Copy of within claim rec'd Sept. 3/  
26.

McCUTCHEEN, OLNEY MANNON &  
GREENE.

Received and filed Sept. 7, 1926.

FRANCIS KRULL,  
U. S. Commissioner, Northern District of Cali-  
fornia, at S. F.

Filed Oct. 19, 1926. [48]

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[Title of Court and Cause.]

### CLAIM OF DANIEL SULLIVAN.

Comes now Daniel Sullivan, and as an employce  
of the County of Alameda, State of California,  
injured as hereinafter related, makes claim against  
the above-named Lancaster Steamship Company, a  
corporation, as follows:

#### I.

The County of Alameda is and at all times herein  
mentioned was a body corporate and politic and one  
of the political subdivisions of the State of Cali-  
fornia, incorporated and organized as such under  
and in accordance with the laws of the State of  
California.

II.

That petitioner herein, Lancaster Steamship Company, a corporation, is now and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and at all times in said petition mentioned, has been sole owner of that certain American steamer known as the "Lancaster," her engines, boats, boilers, tackle, apparel and furniture.

III.

That on the 7th day of January, 1926, and for a long time prior thereto said County of Alameda owned, maintained and operated in the County of Alameda, with the consent and under the direction of the War Department of the [49] United States of America, a certain drawbridge across a body of water known as the Estuary, which said drawbridge connected the City of Oakland and the City of Alameda; that on the 7th day of January, 1926, said bridge, commonly known as the Webster Street Bridge, was in charge of and operated under the direction of the said County of Alameda, by claimant, Daniel P. Sullivan, a bridge-tender and employee of said County of Alameda.

That on said 7th day of January, 1926, said County of Alameda owned and maintained in the middle of said Estuary adjacent to said Webster Street Bridge, certain fender piles, piling and false work for the protection of said bridge.

## IV.

That on said 7th day of January, 1926, around five o'clock P. M., the steamship "Lancaster" and the tugboat "Sea Lion" were proceeding together in a westerly direction on said Estuary in the vicinity of and towards said Webster Street Bridge, the said tug "Sea Lion" being then and there connected with, tied to, operated in conjunction with and assisting the said steamship "Lancaster."

That the Webster Street Bridge was then and there, and for some time prior thereto had been, wide open, waiting for the said "Lancaster" and the said "Sea Lion" to pass through the open draw.

That while said Webster Street Bridge was thus standing wide open the said steamship "Lancaster" and the said tug "Sea Lion" crashed into, collided with, struck, damaged, injured and destroyed the said Webster Street Bridge and said fender piles, piling and false work, thereby violently and suddenly precipitating and throwing claimant, Daniel Sullivan, into the waters of said Estuary, proximately causing his injuries and damage hereinafter complained of. [50]

## V.

That said collision and said damage was caused by the fault and negligence of the Lancaster Steamship Company and the Shipowners & Merchants Tugboat Company, and their and each of their agents and servants employed by them, and each of them in connection with the operation and main-

tenance of said "Lancaster" and said "Sea Lion" and without any fault or negligence on the part of said claimant, Daniel Sullivan.

VI.

That as a proximate result of the premises, claimant, Daniel Sullivan, suffered injuries and contusions to his right shoulder, congestion of the lungs, abrasions of the right leg, pain and soreness of the lower back, and that since his aforesaid injuries, claimant, Daniel Sullivan, has had increased pains in his appendix, which he is informed and believes and therefore alleges are due to his aforesaid injuries.

VII.

That as a proximate result of the premises, claimant has suffered special damage and loss of articles and clothing and jewelry and money in the total sum of One Hundred Forty-three and 80/100 (\$143.80) Dollars.

VIII.

That also as a proximate result of the premises, claimant Daniel Sullivan has been damaged in the sum of Three Thousand (\$3,000.00) Dollars.

IX.

Claimant contends that the petitioner, Lancaster Steamship Company, a corporation, has no right to limit its liability or to be exonerated therefrom, nor to proceed as it has proceeded; claimant also contends that the above-entitled court has no jurisdiction in the matter, and, [51] therefore, claim-

ant presents this claim under protest in order to safeguard his rights.

WHEREFORE, claimant prays that he be allowed the damages as aforesaid, together with interest and costs, and for such other and further relief as he may be entitled to receive.

FRANK J. CREEDE,

W. J. O'CONNOR,

Proctors for Claimant, Daniel Sullivan. [52]

State of California,  
County of Alameda,—ss.

Daniel Sullivan, being first duly sworn, deposes and says:

That he is the claimant in the above-entitled action; that he has read the foregoing claim and knows the contents thereof, and the same is true except as to those facts therein stated on information and belief, and as to them he believes them to be true.

DANIEL SULLIVAN.

Subscribed and sworn to before me this 2d day of September, 1926.

HARRY W. PULCIFER,

Justice of the Peace of Oakland Township, County of Alameda, State of California.

State of California,  
County of Alameda,—ss.

I, Geo. E. Gross, County Clerk of the County of Alameda, State of California, and *Ex-officio* Clerk of the Superior Court of the State of California in and for the County of Alameda, which



Received and filed Sept. 7, 1926.

FRANCIS KRULL,  
U. S. Commissioner, Northern District of California, at S. F.

Filed Oct. 19, 1926. [54]

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[Title of Court and Cause.]

### EXCEPTIONS TO PETITION.

To the Honorable the Judges of the United States  
District Court for the Northern District of  
California:

The County of Alameda, a body corporate and politic and one of the political subdivisions of the State of California, claimant named in the petition herein, specially appearing for the purpose of contesting the jurisdiction of this court, excepts to the libel and petition herein and files its exceptive allegations as hereinafter set forth, and for ground of exceptions respectfully shows:

#### I.

That said petition does not state facts sufficient to constitute a cause of action against this claimant, County of Alameda.

#### II.

That said petition fails to show that the value of said steamer "Lancaster" is less than the amount of the loss, damage or injury done, suffered or incurred by reason of the acts described



therein, and hence the said petition fails to show that there is or could be any limitation of liability.

III.

That said petition fails to show that the acts described therein and the alleged cause of libel therein set forth, are, or is, within the admiralty and maritime jurisdiction of the United States or of this Honorable Court. [55]

IV.

That the said petition fails to set forth facts sufficient to give this court jurisdiction for adjudicating the limitation of liability asked for by petitioner by reason of the matters contained in said petition, and this claimant assigns the following matters in which said petition fails to set forth a cause of action cognizable in this court:

1. That said petition fails to show that the value of said steamer "Lancaster" is less than the amount of the loss, damage or injury done, suffered or incurred by reason of the acts described therein, and hence the said petition fails to show that there is or could be any limitation of liability.

2. That as appears from the petition herein this cause was already in process of adjudication in a proper state court, in that an action to try and determine the controversy between petitioner and this excepting claimant, County of Alameda, had been actually filed by the said County of Alameda against petitioner herein and others in the Superior Court of the State of California, which said action ever since has been and now is pending in said Superior

Court of the State of California, and that it does not appear in said petition nor can it be ascertained therefrom that the said State Court at all times herein mentioned was not, and is not, competent to provide all proper relief, as to all matters arising out of the accident set forth in said petition.

V.

That it appears from said petition from the exceptive allegations hereunto attached and by reference made a part hereof, that the value of said steamer "Lancaster" and her pending freight is greatly in excess of the amount of the loss, damage and injury done, suffered and incurred by reason of the acts, or any of the acts described in said petition; [56] and hence that there is not occasion for any limitation proceeding in the within cause and that there is and could be no limitation of liability as to petitioner in the within cause, and no reason for depriving this claimant of its common-law right to trial by jury in this cause.

WHEREFORE, claimant prays that the said petition for limitation of liability be dismissed and that said restraining order, heretofore issued against this claimant in the within cause, be dissolved, or in any event if the Court should not deem said dismissal meet and proper, that the said restraining order be dissolved and this claimant be authorized and permitted to prosecute its said cause of action now pending against petitioner in the Superior Court of the State of California, as afore-

said, and that claimant have judgment for its costs and disbursements herein.

EARL WARREN,  
District Attorney in and for the County of Alameda,

J. F. COAKLEY,  
Asst. Dist. Atty.,  
ROBERT M. FORD,  
Deputy District Attorney in and for the County of Alameda,  
Proctors for Claimant, County of Alameda.

[Endorsed]: Receipt of copy admitted this 14th day of July, 1927.

FARNHAM P. GRIFFITHS,  
McCUTCHEN, OLNEY, MANNON &  
GREENE.

Filed Jul. 16, 1927. [57]

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[Title of Court and Cause.]

EXCEPTIVE ALLEGATIONS.

To the Honorable the Judges of the United States District Court for the Northern District of California:

The exceptive allegations of the County of Alameda, claimant in the above-entitled cause, respectfully shows:

I.

That at all of the times mentioned in the petition in the above-entitled cause, said County of

Alameda was and is a body corporate and politic and one of the political subdivisions of the State of California, organized and incorporated as such under and in accordance with the laws of the State of California.

## II.

That at all times mentioned in the petition in the above-entitled cause, this claimant owned, operated and maintained that certain drawbridge referred to in said petition and situated wholly within the exterior boundary and limits of said County of Alameda as the same are established by law, that is to say, that certain drawbridge across that certain body of water or channel commonly designated as the Oakland Estuary, said drawbridge connecting the City of Oakland and the City of Alameda, both in said County of Alameda, and at all times [58] herein referred to, prior to the accident hereinafter set forth, used by street-cars, vehicles and pedestrians in passing from one said city to the other said city, said drawbridge being commonly referred to as the "Webster Street Bridge"; and that on the 7th day of January, 1926, the said steamer "Lancaster" with the tug "Sea Lion" made fast to her starboard quarter, was being navigated from a point in and along said Oakland Estuary easterly of the said Webster Street Bridge in a westerly direction down the channel of said Estuary, and when a short distance above and easterly of said bridge, the said steamer "Lancaster" sheared to port and struck the eastern span of said drawbridge, pushing it from the piers

on which it rested, so that it fell into the water, causing great injury and damage to said bridge.

III.

That on or about January 28, 1926, this claimant, County of Alameda, filed in the Superior Court of the State of California its action against petitioner and others in the sum of Two Hundred Thousand and no/100 Dollars (\$200,000.00), for and on account of the said damage done to said Webster Street Bridge, as aforesaid; and that at all times thereafter said cause of action has been and now is pending in the Superior Court of the State of California; and that said Superior Court of the State of California was at all times herein mentioned and now is competent to provide all proper relief in said matter.

IV.

That reference is hereby made to the said petition of petitioner on file herein and to the claim of this claimant, County of Alameda, on file in the within cause, for a more complete statement with reference to the facts connected with the above-mentioned collision and the resulting damage and [59] injury to said bridge, and also with reference to the said cause of action filed by this claimant in the Superior Court of the State of California, and ever since and now pending in said Superior Court, as aforesaid.

V.

That the records, pleadings, documents, entries and filings of this court on file in the within cause

disclose the following facts: That there are but three claims on file in the within cause on account of the matters referred to in said petition, to wit, the claim of this claimant, County of Alameda, the claim of Daniel Sullivan and the claim of State Compensation Insurance Fund; that upon and following the filing of the petition herein, the Court made its order referring to the Honorable Francis Krull, at all times herein referred to as United States Commissioner duly appointed, qualified and acting as such, and having his office and place of business in the City and County of San Francisco, in this State and District, the matter of the appraisal of the said "Lancaster" and her pending freight; that thereafter and pursuant to said order, the said United States Commissioner did make his finding and report to this Court upon said matter, in which he did find and determine the said value of said "Lancaster" and her freight pending at the termination of that certain voyage mentioned in the petition herein, that is to say, the said voyage upon which the said "Lancaster" collided with the Webster Street Bridge, as aforesaid, to be the sum of Three Hundred Five Thousand, Eight Hundred Fifty-nine and  $38/100$  Dollars (\$305,859.38); that thereafter said finding and report of said United States Commissioner was approved by this Court; that thereafter, and on or about July 28, 1926, pursuant to the order of this Court, Monition was issued against all persons claiming damage for any loss, damage or injury arising out of the matter referred to in said peti-

tion; [60] that this Court did then and there make its further order restraining this claimant, County of Alameda, from further prosecution and proceeding in its said action pending in the Superior Court of the State of California, as aforesaid; that pursuant to said monition and on or about July 28, 1926, citation duly issued requiring all such persons claiming damage as aforesaid, to appear before this Court and make report of their respective claims before the said United States Commissioner on or before September 14, 1926, under penalty of default; that thereafter and pursuant to said monition and said citation, and prior to September 14, 1926, this claimant, County of Alameda, filed in the within cause its claim and demand against petitioner in the sum of Two Hundred Thousand and no/100 (\$200,000.00) Dollars, with interest and costs; that said claim so filed by this claimant, as aforesaid, was and is the identical claim which forms the basis for this claimant's cause of action against petitioner and others filed in the Superior Court of California, as hereinabove set forth; that in its said claim so filed in this cause, as aforesaid, this claimant, County of Alameda, then and there alleged that petitioner herein had and has no right to limit its liability or to proceed as it has proceeded, and further contended that this Court had and has no jurisdiction in this matter, and alleged that this claimant therefore presented its said claim under protest in order to safeguard its rights; that pursuant to said monition and said citation, and prior to September 14,

1926, the following additional claims were filed in the within cause, to wit: Daniel Sullivan, in the sum of \$3,143.80 for and on account of personal injuries to said claimant resulting from said collision and from said matter set forth in said petition, and for necessary medical and other expenses necessarily incurred by [61] reason thereof, and State Compensation Insurance Fund, in the sum of Five Hundred Sixty-nine and 13/100 Dollars (\$569.13), for the reasonable cost and expense of medical and other necessary expenses necessarily incurred by reason of the said personal injuries to said Daniel Sullivan, claimant herein; that no other claims or demands of any kind have been presented or filed in this cause, and that the total amount of the three claims herein referred to and so presented and filed herein, as aforesaid, was and is the sum of Two Hundred Three Thousand Seven Hundred Twelve and 93/100 Dollars (\$203,712.93); that said motion was returned to this Court on or about September 14, 1926, and that this cause was then and there regularly continued by this Court to September 28, 1926, and that on said 28th day of September, 1926, said action came on regularly for hearing, and at said time and place, proclamation having been duly made in open court, this Court did thereupon order that the default be entered of all persons who had not so appeared and so filed their claims, as required by said motion and citation, and that a decree of default was thereupon entered against all such persons not so appearing and filing their said claims.



VI.

That, as aforesaid, the time for the filing of any claims or demands arising out of the matters set forth in the within petition has long since elapsed, and that default has been duly taken and entered against any and all persons claiming damage, loss or injury from or by reason of any acts set forth in said petition, other than as to the said claims of the said three claimants hereinabove referred to.

VII.

That the total amount of the claims so filed in this cause, as aforesaid, was and is the sum of Two Hundred Three Thousand, Seven Hundred Twelve and  $93/100$  Dollars (\$293,712.93); [62] that the value of the said "Lancaster" and the pending freight, as so found and determined by the said United States Commissioner, as aforesaid, was and is the sum of Three Hundred Five Thousand Eight Hundred Fifty-nine and  $38/100$  (\$305,859.38) Dollars, and that by reason of the premises there is and can be no question of apportionment or of the or any limitation of the amount of petitioner's liability.

VIII.

That said collision referred to in said petition occurred on January 7, 1926, and that more than one year has now elapsed since the occurrence thereof, and that therefore the claims or demands of any person or persons against petitioner by reason of the acts set forth in said petition, other than the three claims of the said three claimants

hereinabove mentioned who appeared and filed their claims herein as aforesaid, are barred by the Statute of Limitations of the State of California, that is to say, by Section 340 of the Code of Civil Procedure of California, and that by analogy the said claims or demands of any said persons not appearing and filing their said claims, as aforesaid, are barred by laches in this court.

IX.

That by reason of the premises and of the matters hereinabove set forth, there is and can be no limitation of any liability of petitioner herein and this Court has no jurisdiction of the matters contained or referred to in said petition and should therefore dismiss the said petition of petitioner as to this claimant, County of Alameda, or in lieu thereof, should dissolve the restraining order heretofore granted herein restraining this claimant from prosecuting its said action in the said Superior Court of the State of California, as aforesaid.

EARL WARREN,

District Attorney in and for the County of Alameda, [63]

J. F. COAKLEY,

Asst.,

ROBERT M. FORD,

Deputy District Attorney in and for the County of Alameda,

Proctors of Claimant, County of Alameda. [64]

State of California,  
County of Alameda,—ss.

J. F. Coakley, being first duly sworn, deposes and says: That Earl Warren is District Attorney in and for the County of Alameda, State of California, and that affiant is assistant District Attorney in and for the County of Alameda, State of California; that affiant has read the foregoing exceptive allegations attached to the exceptions of County of Alameda, claimant herein, and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

J. F. COAKLEY.

Subscribed and sworn to before me this 13 day of July, 1926.

[Seal]

RICHARD H. CHAMBERLAIN, Jr.,  
Notary Public in and for the County of Alameda,  
State of California.

[Endorsed]: Receipt of copy of above exceptive allegations admitted this 14th day of July, 1927.

FARNHAM P. GRIFFITHS,  
McCUTCHEM, OLNEY, MANNON &  
GREENE.

Filed Jul. 16, 1927. [65]

[Title of Court and Cause.]

NOTICE OF MOTION OF COUNTY OF ALAMEDA, CLAIMANT, FOR DISMISSAL OF PETITION FOR LIMITATION ON THE GROUND OF WANT OF JURISDICTION.

To the Petitioner, and to Its Counsel, Messrs. McCutchen, Olney, Mannon & Green:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on Monday, the 15th day of August, 1927, at the opening of court on the morning of said day, the County of Alameda, respondent and claimant herein, specially appearing for the purpose of contesting the jurisdiction of this court to hear and determine the matters raised by the petition of petitioners herein, will move the said court for the dismissal of the petition herein upon the ground that this court has no jurisdiction of the matters set forth in said petition. Said motion will be based upon the following grounds, to wit:

That at all of the times mentioned in the petition in the above-entitled cause, said County of Alameda was and is a body corporate and politic and one of the political subdivisions of the State of California, organized and incorporated as such under and in accordance with the laws of the State of California.

[66]

II.

That at all times mentioned in the petition in the above-entitled cause this claimant owned, oper-

ated and maintained that certain drawbridge referred to in said petition and situated wholly within the exterior boundary and limits of said County of Alameda as the same are established by law, that is to say, that certain drawbridge across that certain body of water or channel commonly designated as the Oakland Estuary, said drawbridge connecting the City of Oakland and the City of Alameda, both in said County of Alameda, and at all times herein referred to, prior to the accident hereinafter set forth, used by street-cars, vehicles and pedestrians in passing from one said city to the other said city, said drawbridge being commonly referred to as the "Webster Street Bridge"; and that on the 7th day of January, 1926, the said steamer "Lancaster" with the tug "Sea Lion" made fast to her starboard quarter, was being navigated from a point in and along said Oakland Estuary easterly of the said Webster Street Bridge in a westerly direction down the channel of said estuary, and when a short distance above and easterly of said bridge, the said steamer "Lancaster" sheared to port and struck the eastern span of said drawbridge, pushing it from the piers on which it rested, so that it fell into the water, causing great injury and damage to said bridge.

### III.

That on or about January 28, 1926, this claimant, County of Alameda, filed in the Superior Court of the State of California its action against petitioner and others in the sum of Two Hundred Thousand

and no/100 Dollars (\$200,000) for and on account of the said damage done to said Webster Street Bridge, as aforesaid; and that at all times thereafter said cause of action has been and now is pending in the Superior Court of the State of California, and that said Superior Court [67] of the State of California was at all times herein mentioned and now is competent to provide all proper relief in said matter.

#### IV.

That reference is hereby made to the said petition of petitioner on file herein and to the claim of this claimant, County of Alameda, on file in the within cause, for a more complete statement with reference to the facts connected with the above-mentioned collision and the resulting damage and injury to said bridge, and also with reference to the said cause of action filed by this claimant in the Superior Court of the State of California, and ever since and now pending in said Superior Court, as aforesaid.

#### V.

That the pleadings, papers, documents, entries and filings in this case show:

That this cause was at the time of the filing of the within petition already in process of adjudication in a proper court of the State of California; that the petition sets forth definitely but one claim for loss, damage or injury resulting from the acts described in said petition, to wit, the said suit by the County of Alameda against petitioner in the

sum of Two Hundred Thousand and no/100 Dollars (\$200,000.00), with interest and costs, filed on or about January 28, 1926, in the Superior Court of the State of California, which said suit was then at the filing of the petitioner's within petition for limitation, ever since has been and now is, pending in said Superior Court of the State of California, as aforesaid; that said petition herein alleges, upon information and belief, that other suits and claims may be filed against petitioner, which in the aggregate would greatly exceed the value of petitioner's interest in said steamer "Lancaster" and the freight pending upon the termination of the voyage upon which he was engaged at the time of the said collision with said bridge, [68] as set forth in the within petition; that but three claims and no more have been filed herein, namely, those of the County of Alameda, Daniel Sullivan and State Compensation Insurance Fund, and that the value of petitioner's interest in said vessel and her pending freight is and was at all times herein referred to a sum and amount greatly in excess of the total of said three claims; that upon and following the filing of the petition herein, the Court made its order referring to the Honorable Francis Krull, at all times herein referred to *a* United States Commissioner, duly appointed, qualified and acting as such, and having his office and place of business in the City and County of San Francisco, in this State and District, the matter of the appraisement of the said "Lancaster" and her pending freight; that

thereafter and pursuant to said order, the said United States Commissioner did make his finding and report to this Court upon said matter in which he did find and determine the said value of said "Lancaster" and her freight pending at the termination of that certain voyage mentioned in the petition herein, upon which voyage said "Lancaster" collided with the Webster Street Bridge, as aforesaid, to be the sum of Three Hundred Five Thousand Eight Hundred Fifty-nine and 38/100 Dollars (\$305,859.38); that thereafter said finding and report of said United States Commissioner was approved by this Court; that thereafter, and on or about July 28, 1926, pursuant to the order of this Court, monition was issued against all persons claiming damage for any loss, damage or injury arising out of the matter referred to in said petition; that this Court did then and there make its further order restraining this claimant, County of Alameda, from further prosecution and proceeding in its said action, pending in the Superior [69] Court of the State of California, as aforesaid; that pursuant to said monition and on or about July 28, 1926, citation duly issued requiring all such persons claiming damage, as aforesaid, to appear before this Court and make report of their respective claims before the said United States Commissioner on or before September 14, 1926, under penalty of default; that thereafter and pursuant to said monition and said citation and prior to September 14, 1926, this claimant, County of Alameda, filed in the within



cause its claim and demand against petitioner in the sum of Two Hundred Thousand and no/100 Dollars (\$200,000.00), with interest and costs; that said claim so filed by this claimant, as aforesaid, was and is the identical claim which forms the basis for this claimant's cause of action against petitioner and others filed in the Superior Court of California as hereinabove set forth; that in its said claim so filed in this cause, as aforesaid, this claimant, County of Alameda, then and there alleged that petitioner herein had and has no right to limit its liability or to proceed as it has proceeded, and further contended that this Court had and has no jurisdiction in the matter, and further alleged that this claimant, therefore, presented its said claim under protest in order to safeguard its rights; that pursuant to said monition, and said citation and prior to September 14, 1926, the following additional claims were filed in the within cause, to wit:

Daniel Sullivan, in the sum of Three Thousand One Hundred Forty-three and 80/100 Dollars (\$3,143.80) for and on account of personal injuries to said claimant resulting from said collision, and from said matter set forth in said petition and for necessary medical and other expenses necessarily incurred by reason thereof; and [70] State Compensation Insurance Fund, in the sum of Five Hundred Sixty-nine and 13/100 (\$569.13) Dollars, for the reasonable cost and expense of medical and other necessary expenses necessarily incurred by reason of the said personal injuries to said Daniel

Sullivan, claimant herein; that no other claims or demands of any kind have been presented or filed in this cause, and that the total amount of the three claims herein referred to, and so presented and filed herein, as aforesaid, was and is the sum of Two Hundred Three Thousand Seven Hundred Twelve and 93/100 Dollars (\$203,712.93); that said motion was returned to this court on or about September 14, 1926, and that this cause was then and there regularly continued by this court to September 28, 1926; and that on said 28th day of September, 1926, said action came on regularly for hearing, and at said time and place, proclamation having been duly made in open court, this court did thereupon order that the default be entered of all persons who had not so appeared and so filed their claims as required by said motion and citation, and that a decree of default was thereupon entered against all such persons not so appearing and filing their said claims.

#### VI.

That, as aforesaid, this claimant, County of Alameda, has by order of this Court, been enjoined from prosecuting its said suit against petitioner and others arising out of the matters referred to in the petition herein, and now and at all times referred to in said petition herein pending in the Superior Court of the State of California as aforesaid.

#### VII.

That, as aforesaid, the time for the filing of any claim or demands arising out of the matters set

forth in the within petition has long since elapsed, and that default has been duly taken and entered against any and all persons claiming damage, loss or injury from or by reason of any acts set [71] forth in said petition, other than as to the said claims of the said three claimants hereinabove referred to.

### VIII.

That, as aforesaid, due appraisalment of the steamer "Lancaster" has heretofore been had in this proceeding and the total value of the said steamer and its pending freight found to be the sum of Three Hundred Five Thousand Eight Hundred Fifty-nine and 38/100 Dollars (\$305,859.38); that, as aforesaid, the total amount of the claims so filed in this cause was and is the sum of Two Hundred Three Thousand Seven Hundred Twelve and 93/100 Dollars (\$203,712.93); that the said value of the "Lancaster" and her pending freight was and is therefore a sum greatly in excess of the total of said claims together with interest and costs thereof; that by reason of the premises there is and can be no question of apportionment or of the, or any, limitation of the amount of petitioner's liability, and that therefore this Court has no jurisdiction to hear and determine the matter raised by the petition of petitioner herein, and that no jurisdiction exists in this Court to deprive this claimant, County of Alameda, of its right to a jury trial in the said Superior Court of California in the suit herein-

above described, based upon the accident referred to in the petition of petitioner herein.

#### IX.

That said collision referred to in said petition occurred on January 7, 1926, and that more than one year has now elapsed since the occurrence thereof, and that therefore the claims or demands of any person or persons against petitioner by reason of the acts set forth in said petition, other than the three claims of the said three claimants hereinabove mentioned who appeared and filed their claims herein as aforesaid, are barred by the Statute of Limitations of the State of [72] California, that is to say, by Section 340 of the Code of Civil Procedure of California, and that by analogy the said claims or demands of any said persons not appearing and filing their said claims, as aforesaid, are barred by laches in this court.

#### X.

That by reason of the premises and of the matters hereinbefore set forth, there is and can be no limitation of any liability of petitioner herein and this Court has no jurisdiction of the matters contained or referred to in said petition and should therefor dismiss the said petition of petitioner as to this claimant, County of Alameda, or in lieu thereof, should dissolve the restraining order heretofore granted herein restraining this claimant from prosecuting its said action in the said Superior Court of the State of California, as aforesaid.

XI.

That the claimant, County of Alameda, relies in its said motion to dismiss the said petition for limitation on all papers, pleadings, documents, entries and filings of record in this proceeding.

WHEREFORE, claimant herein, County of Alameda, moves that the said petition for limitation of liability be dismissed or in lieu thereof, that the restraining order heretofore issued enjoining the prosecution of claimant's suit in the Superior Court of the State of California, as aforesaid, be dissolved, and that petitioner be authorized and permitted to prosecute its said suit in said Superior Court; and that claimant herein recover its costs against the petitioner.

EARL WARREN,

District Attorney in and for the County of  
Alameda, [73]

J. F. COAKLEY,

Asst. Dist. Atty.,

ROBERT M. FORD,

Deputy District Attorney in and for the County of  
Alameda,

Proctors for Claimant, County of Alameda.

[Endorsed]: Receipt of copy of above notice admitted this 14th day of July, 1927.

FARNHAM P. GRIFFITHS.

McCUTCHEN, OLNEY, MANNON &  
GREENE.

Filed Jul. 16, 1927. [74]

## CERTIFICATE OF SECRETARY OF STATE.

State of California—Department of State.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that it does not appear from the records of this office that a corporation incorporated under the laws of the State of New York and having as its corporate name Lancaster Steamship Company has ever filed in this office a designation of a person residing in this state upon whom process issued by authority of or under any law of this state may be served; nor does it appear that said corporation has ever filed in this office a certified copy of its articles of incorporation, or its charter, or of the statute or statutes, or legislative or executive, or governmental act or acts creating it; that no record whatsoever in relation to said corporation appears in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed hereto this 20th day of October, A. D. 1927.

(Great Seal of the State of California.)

FRANK C. JORDAN,  
Secretary of State.

By FRANK H. CORY,  
Deputy.

[Endorsed]: Filed Oct. 24, 1927. [75]

[Title of Court and Cause.]

ORDER DISMISSING PETITION AS TO  
COUNTY OF ALAMEDA.

The motion to dismiss the petition herein is granted as to the County of Alameda, one of the claimants herein. Jurisdiction of the petition is retained as to all other claimants who have not appeared and moved for dismissal thereof.

November 14th, 1927.

FRANK H. KERRIGAN,  
District Judge.

[Endorsed]: Filed Nov. 14, 1927. [76]

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[Title of Court and Cause.]

OBJECTION AND NOTICE OF OBJECTION  
TO CLAIM OF THE COUNTY OF  
ALAMEDA.

To Francis Krull, Esq., United States Commissioner, and to the County of Alameda, and Earl Warren and R. M. Ford, Its Proctors:

YOU WILL PLEASE TAKE NOTICE, AND YOU ARE HEREBY NOTIFIED, that Lancaster Steamship Company, a corporation, will object, and hereby does object, to the claim filed herein by the County of Alameda upon the ground that said claim is excessive in amount, and petitioner hereby reserves the right to contest each and every item and

the amount thereof set forth in said claim of said County of Alameda and to require strict proof thereof.

Petitioner further objects to said claim upon the ground that any loss or damage suffered, or claimed to have been suffered, by said County of Alameda was not caused by any fault, negligence or want of due care on the part of said petitioner.

FARNHAM P. GRIFFITHS,  
McCUTCHEM, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner. [77]

[Endorsed]: Service of the within notice and receipt of a copy is hereby admitted this 16th day of Nov., 1927.

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Proctor for Claimant.

Filed Nov. 16, 1927. [78]

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[Title of Court and Cause.]

**OBJECTION AND NOTICE OF OBJECTION  
TO CLAIM OF STATE COMPENSATION  
INSURANCE FUND.**

To Francis Krull, Esq., United States Commissioner,  
and to State Compensation Insurance Fund,  
and Frank J. Creede and W. J. O'Connor, Its  
Proctors:

**YOU WILL PLEASE TAKE NOTICE, AND  
YOU ARE HEREBY NOTIFIED, that Lancaster**



Steamship Company, a corporation, will object, and hereby does object, to the claim filed herein by State Compensation Insurance Fund upon the ground that said claim is excessive in amount, and petitioner hereby reserves the right to contest each and every item and the amount thereof set forth in said claim of said State Compensation Insurance Fund and to require strict proof thereof.

Petitioner further objects to said claim upon the ground that any loss or damage suffered, or claimed to have been suffered, by said State Compensation Insurance Fund was not caused by any fault, negligence or want of due care on the part of said petitioner.

FARNHAM P. GRIFFITHS,  
McCUTCHEEN, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner. [79]

[Endorsed]: Service of the within objection and notice of objection and receipt of a copy is hereby admitted this 16th day of November, 1927.

W. J. O'CONNOR,  
Proctor for State Compensation Insurance Fund.

Filed Nov. 16, 1927. [80]

[Title of Court and Cause.]

OBJECTION AND NOTICE OF OBJECTION  
TO CLAIM OF DANIEL SULLIVAN.

To Francis Krull, Esq., United States Commissioner,  
and to Daniel Sullivan, and Frank J. Creede  
and W. J. O'Connor, His Proctors:

YOU WILL PLEASE TAKE NOTICE, AND  
YOU ARE HEREBY NOTIFIED, that Lancaster  
Steamship Company, a corporation, will object, and  
hereby does object, to the claim filed herein by  
Daniel Sullivan upon the ground that said claim  
is excessive in amount, and petitioner hereby re-  
serves the right to contest each and every item and  
the amount thereof set forth in said claim of said  
Daniel Sullivan and to require strict proof thereof.

Petitioner further objects to said claim upon the  
ground that any loss or damage suffered or claimed  
to have been suffered by said Daniel Sullivan was  
not caused by any fault, negligence or want of due  
care on the part of said petitioner.

FARNHAM P. GRIFFITHS,  
McCUTCHEM, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner.

[Endorsed]: Service of the within objection and  
notice of objection and receipt of a copy is hereby  
admitted this 16th day of November, 1927.

W. J. O'CONNOR,  
Proctor for Daniel Sullivan.

In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY.—No. 19,048.

In the Matter of the Petition of LANCASTER STEAMSHIP COMPANY, a Corporation, for Exoneration from or Limitation of Liability.

DECREE AS TO COUNTY OF ALAMEDA.

On motion of the County of Alameda, a body corporate and politic and one of the political subdivisions of the State of California, claimant herein, to dismiss the petition herein in so far as it applies to the said County of Alameda, coming on regularly to be heard, and it appearing that there are but three claims on file in this proceeding, to wit, the said County of Alameda in the sum of Two Hundred Thousand Dollars (\$200,000.00), Daniel Sullivan in the sum of Three Thousand One Hundred Forty-three and 80/100 Dollars (\$3,143.80), and State Compensation Insurance Fund in the sum of Five Hundred Sixty-nine and 13/100 Dollars (\$569.13);

And it further appearing that due appraisement of the said steamer "Lancaster" and her pending freight has been had in this proceeding, and the said value thereof found to be the sum of Three Hundred Five Thousand Eight Hundred Fifty-nine and 38/100 Dollars (\$305,859.38);

And it further appearing that after due notice published and reserved, as required by law, a default has been entered herein against all persons, if any there be, entitled to file a claim in this proceeding;

And it further appearing that the size of the fund for [82] the payment of the said claims herein filed and hereinabove set forth exceeds the total amount of said claims;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the said petition be dismissed as to the said County of Alameda, claimant herein, and that petitioner take nothing against said County of Alameda by said petition;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the restraining order heretofore and on or about July 28, 1926, issued in the within proceeding, enjoining the prosecution of any suit or suits against the within petitioner or against the steamer "Lancaster," and particularly restraining the maintenance and further prosecution of that certain action brought by the said County of Alameda against the petitioner herein, and then and there and now pending in the Superior Court of the State of California, in and for the County of Santa Clara, and numbered and designated as No. 32,927 of the records of said court, be and the same is hereby vacated and dissolved as to the said County of Alameda, claimant herein;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said County of Alameda do have and recover its costs herein;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction of the within petition is retained as to all other claimants who have filed claims herein;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above order and decree shall in nowise effect the rights of the petitioner herein acquired, if any there be, against any other person or persons entitled to file claims herein, if any there be.

Dated, this 13th day of Dec., 1927.

FRANK H. KERRIGAN,  
Judge. [83]

[Endorsed]: Due service of the above notice and receipt of copy thereof is hereby admitted this 29th day of November, 1927.

McCUTCHEEN, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner.

[Endorsed]: Filed Dec. 13, 1927. [84]

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[Title of Court and Cause.]

ORDER STAYING PROCEEDINGS.

On motion of proctors for petitioner, and good cause appearing therefor,—

IT IS HEREBY ORDERED that all proceedings in the above-entitled matter be and the same are hereby stayed 30 days from and after the date hereof.

IT IS FURTHER ORDERED that the restraining order heretofore made and entered herein be and the same is hereby continued in full force and effect during said period of 30 days from the date hereof and until the further order of this Court.

Dated December 13th, 1927.

FRANK H. KERRIGAN,  
District Judge.

[Endorsed]: Filed Dec. 13, 1927. [85]

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[Title of Court and Cause.]

#### ORDER STAYING PROCEEDINGS.

The petitioner herein, being about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain decree made and entered herein on the 13th day of December, 1927, dismissing said proceeding as against the County of Alameda, a body corporate; and

The Court having fixed the amount of a superseas bond to be given by said petitioner on said appeal;

NOW, THEREFORE, IT IS HEREBY ORDERED that all proceedings in the above-entitled matter be and they are hereby stayed until after the entry of a final judgment or decree by said United States Circuit Court of Appeals; and

IT IS FURTHER ORDERED that the restraining order heretofore made and entered herein be and the same is hereby continued in full force and effect during the pendency of said appeal and until after

the judgment and decree of said Circuit Court of Appeals becomes final.

Dated, January 9th, 1928.

FRANK H. KERRIGAN,  
District Judge.

[Endorsed]: Filed Jan. 9, 1928. [86]

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[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court and to the County of Alameda, a Body Corporate, and Earl Warren, and Robert M. Ford, Its Proctors; Daniel Sullivan and Frank J. Creede and W. J. O'Connor, His Proctors; State Compensation Insurance Fund and Frank J. Creede and W. J. O'Connor, Its Proctors:

YOU WILL PLEASE TAKE NOTICE that Lancaster Steamship Company, a Corporation, owner of the SS. "Lancaster," and petitioner herein, hereby appeals from the order and final decree, made and entered herein on the 13th day of December, 1927, dismissing said proceeding as to the County of Alameda, to the next United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit, at the City and County of San Francisco.

Dated January 9th, 1928.

FARNHAM P. GRIFFITHS,  
• McCUTCHEEN, OLNEY, MANNON &  
GREENE,

Proctors for Said Petitioner.

[Endorsed]: Service of the within notice of appeal and receipt of a copy is hereby admitted this 9th day of January, 1928.

EARL WARREN,  
District Attorney,  
ROBERT M. FORD,  
Deputy Dist. Atty.,  
FRANK J. CREEDE,  
W. J. O'CONNOR,  
Proctors for Claimants.

Filed Jan. 10, 1928. [87]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Now comes Lancaster Steamship Company, a corporation, petitioner in said matter, and appellant herein, and says:

That in the record, order, decision and final decree in said cause, there is manifest and material error, and said appellant now makes and files and presents the following assignment of errors on which it relies, to wit:

1. The District Court erred in rendering its order of November 14, 1927, and its final decree of



December 13, 1927, dismissing said proceeding as against the County of Alameda, a body corporate.

2. The District Court erred in dismissing said proceeding as against the County of Alameda, a body corporate, and retaining it as against all other claimants.

3. The District Court erred in holding and deciding that it was without jurisdiction to maintain said proceeding as against the County of Alameda, a body corporate.

4. The District Court erred in holding and deciding that its jurisdiction of said proceeding as against the County of Alameda or in any other respect depended upon the number or total value of the claims presented in said proceeding on or before the return day of the monition issued by said Court. [88]

5. The District Court erred in holding and deciding that its jurisdiction of said proceeding, as against the County of Alameda, or in any other respect, depended upon or was governed by any matter developing or appearing subsequent to the time that the petition for limitation of liability was filed herein.

6. The District Court erred in not holding and deciding that the question of its jurisdiction of said proceeding, as against all parties and all persons suffering loss or damage by reason of the matters set forth in said petition, depended upon and was governed by the nature of the accident set forth in said petition, and the extent of the injuries and losses sustained by all persons affected thereby,

whether or not all such persons thereafter filed claims against petitioner in said proceeding.

7. The District Court erred in holding and deciding that its jurisdiction of said proceeding as against the County of Alameda depended upon or was governed by the question as to whether the total amount or value of the claims presented on or before the return day of the monition, exceeded the total value of the petitioner's interest in said SS. "Lancaster" and her freight pending.

8. The District Court erred in not holding and deciding that its jurisdiction of said proceeding as against the County of Alameda depended upon or was governed by the question as to whether at the time the petition was filed there was a possibility that the total amount or value of the claims which might be presented exceeded the total value of petitioner's interest in said SS. "Lancaster" and her freight pending. [89]

9. The District Court erred in holding and deciding that there was no possibility of the presentation of claims in excess of the value of petitioner's interest in the SS. "Lancaster."

10. Having manifest jurisdiction of the limitation proceeding instituted in said court by The Shipowners & Merchants Tugboat Company and referred to in the petition on file herein, the District Court erred in not retaining jurisdiction of the above-entitled proceeding, so that it might be consolidated with said limitation proceeding filed herein by The Shipowners & Merchants Tugboat Company.

WHEREFORE, said petitioner and appellant prays that said decree be reversed.

FARNHAM P. GRIFFITHS,  
McCUTCHEM, OLNEY, MANNON &  
GREENE,

Proctors for Petitioner and Appellant.

[Endorsed]: Filed Jan. 19, 1928. [90]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 90 pages, numbered from 1 to 90, inclusive, contain a full, true and correct transcript of the records and proceedings, in the Matter of the Petition of Lancaster Steamship Company, a Corp., for Exoneration from or Limitation of Liability, No. 19,048, as the same now remain on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Thirty-five (35) Dollars, and that the same has been paid to me by the proctors for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of February, A. D. 1928.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk. [91]

[Endorsed]: No. 5382. United States Circuit Court of Appeals for the Ninth Circuit. Lancaster Steamship Company, a Corporation, Owner of the Steamship "Lancaster," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture, Appellant, vs. County of Alameda, a Body Corporate, State Compensation Insurance Fund and Daniel Sullivan, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed February 8, 1928.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.